



STATE WATER RESOURCES  
CONTROL BOARD

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DIV. OF WATER RIGHTS  
SACRAMENTO



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August 25, 2006

Ms. Song Her  
Clerk to the Board  
State Water Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**Re: Comment Letter re Notice of Preparation of North Coast Instream Flow Policy  
Substitute Environmental Document and referenced documents**

Dear Ms. Her:

Please consider the following comments on the North Coast Instream Flow Policy Substitute Environmental Document.

Although the California Environmental Quality Act provides for substitute environmental documents in lieu of an Environmental Impact Report or negative declaration, for any certified program, the substitute document shall include at least the following items:

1. Either alternatives to the activity and mitigation measures to avoid or reduce significant or potentially significant effects the project may have on the environment; or
2. A statement that the Agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment, and therefore no alternatives or mitigation are proposed. (CEQA Guidelines, Section 15252.)

The State Water Resources Control Board ("State Water Board") Substitute Environmental Document must analyze whether there are any significant or potentially significant effects that the North Coast Instream Flow Policy may have on the environment. Such potential significant environmental effects should include not only those provided in the July 19, 2006 Environmental Checklist, but also the following potential impacts of the proposed program.

The potential restriction on development within the North Coast area, which is likely to result in greater development in other parts of the state. Restricting the available water supply as contemplated by the policy will directly hamper the ability of water purveyors to supply water to potential new development. With the projected increase in population in California, this will

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result in development that could occur within the North Coast area to be forced to other parts of the state.

At page 14 of the Environmental Checklist, it is concluded that adoption of the policy in itself will not cause direct impacts to biological resources. However, minimizing flushing flows in sediment-impaired and nutrient-impaired coastal streams which will be the result of implementation of the policy, could have a significant effect on biological resources. The proposed policy is likely to result in several of the proposed stream systems lacking sufficient flushing flows, which would impair fish habitat. This is a potential direct biological impact of the adoption and implementation of the policy. Such a result is in direct contravention of the purpose of the policy. This potential significant impact should be fully analyzed in the Substitute Environmental Document.

At page 24 of the Environmental Checklist, the narrative response indicates adoption of the policy in itself will not cause direct impacts to hydrology and water quality. This conclusion is incorrect. Adoption of the policy itself will cause direct impacts to both hydrology and water quality.

The policy under consideration will set in place a series of actions that, at the most critical time of the hydrologic year, and over a series of impacted watersheds, will systematically divert the water (and the energy) needed to flush sediment and nutrient accumulations from presently-impaired channels, route that water into off-channel storage reservoirs, and uselessly dissipate that much-needed energy.

The text of the Environmental Checklist addresses "minimum bypass flows". "Minimum bypass flows" are desirable from a biologic viewpoint, but even more critical is the need to recognize and protect flushing flows in sediment-impaired and nutrient-impaired coastal streams. Without modification, the proposed instream flow policy will conflict with the court-imposed requirements that led to the designation of sediment-impaired watersheds. The conflict between these policies must be resolved and the method of conflict resolution should be explained before the Instream Flow Policy is adopted.

The Environmental Checklist at Section 9, page 26, indicates that the policy will not cause direct impacts to existing land uses, nor will it conflict with applicable land use plans, policies, regulations, habitat conservation plans, or natural community conservation plans. The policy as currently proposed by the fishery agencies applies to new diversions from the North Coast area. As discussed during the scoping meeting, the State Water Board is considering applying the



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policy to existing water rights. Applying the policy to existing water rights could directly impact existing land uses and conflict with the applicable land use plans, policies, regulations and water management plans relied upon by water purveyors to project supply and demand 20 to 25 years into the future. Such impact to existing water supplies should be analyzed in the Substitute Environmental Document. This same comment applies to Section 13, page 32 of the Environmental Checklist.

The Environmental Checklist concludes that there will be no direct impact to utilities and service systems, and that adoption of the policy would not require new or expanded water supply entitlements. (Environmental Checklist at pp. 36-37.) Adoption of the policy as indicated above will directly impact water supply, especially if applied to existing water rights. Such direct impact could result in the need for new or expanded water supply entitlements in order to meet the continued increased demand for water in California. This direct impact to the North Coast area's water supply should be analyzed in the Substitute Environmental Document.

The State Water Board, as part of its evaluation of the North Coast Instream Flow Policy, should consider and balance the increase in water demand over the next 20 to 25 years. As projected by the Department of Water Resources, by the year 2025, the state will experience a significant increase in water demand, yet there is no current planning to meet this demand. As indicated in the Project Description, the State Water Board is responsible for administering surface water rights, and the Board's mission is to ensure their proper allocation and efficient use for the benefit of present and future generations. The reasonable and beneficial use of the North Coast surface supplies must be balanced against the protection of public trust uses, including fish and wildlife habitat. The Public Trust Doctrine requires the protection of public trust uses whenever *feasible*. Consequently, the State Water Board is placed in the unique position of having to balance the protection of public trust uses against the need to efficiently use an increased amount of surface water in the future. As currently described, the North Coast Instream Flow Policy does not attempt to balance these conflicting obligations. The State Water Board, however, is required to undertake this effort before adopting the proposed policy.

The State Water Board is also considering applying the policy to existing water rights. The methodology and application of this policy to existing rights is not described, analyzed or considered in the Environmental Checklist. Before the State Water Board can apply this policy to existing water rights, it must first develop the methodology under which it would apply to existing water rights, evaluate those potential environmental impacts, and consider whether such application of the policy could result in a takings of private property.



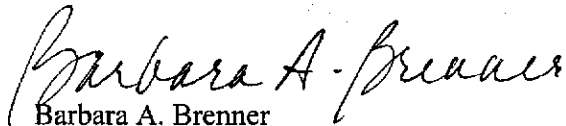
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The proposed policy requires quantitative data, yet there is no information as to how that data will be collected. Requiring individual diverters to collect the data is impractical. Imposing a policy that cannot practically be implemented misses the mark. If there are proposals as to how to collect the data, such proposals should be explained to the public and fleshed out through the public review process.

It is also suggested that other alternatives to the policy could be recommended or considered by the State Water Board. Again, until such alternatives are fully described and analyzed in the Substitute Environmental Document, including an opportunity for public input, the State Water Board cannot adopt such alternatives. The State Water Board must flesh out all feasible alternatives, describe such alternatives to the public, solicit public input to such alternatives, and then engage the CEQA process.

Thank you for considering these comments as part of the scoping phase of the State Water Board's environmental review process.

Best Regards,

  
Barbara A. Brenner

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